

1-1302-5647-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA BOARD OF TEACHING

In the Matter of the Denial
of Renewal of the Secondary
Vocational Teaching License
of Frederick G. Sobota.

FINDINGS_OF_FACT,
CONCLUSIONS_AND
RECOMMENDATION

The above-captioned matter came on for hearing before Administrative Law Judge George A. Beck at 9:00 a.m. on Wednesday, July 10, 1991 at 500 Flour Exchange Building, in the City of Minneapolis, Minnesota. The record closed at the conclusion of the hearing.

Bernard E. Johnson, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Board of Teaching (Board). Frederick Sobota, 18703 Two Rivers Road, Avon, Minnesota 56310, appeared representing himself.

This Report is a recommendation, not a final decision. The Minnesota Board of Teaching will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Kenneth L. Peatross, Executive Secretary, Minnesota Board of Teaching, Room 608 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether or not the Licensee has completed the required 108 clock hours of continuing education activities so as to be eligible for renewal of his secondary vocational teaching license.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Frederick G. Sobota ("Sobota") was issued a secondary vocational

teaching license in construction occupations by the Board of Teaching in 1983.

This license was a two-year entrance license and was then renewed in July of 1985. The license expired July 1, 1990.

2. Each applicant for renewal must demonstrate 108 clock hours of continuing education credits during the prior 5-year period of licensure in order to have his or her license renewed.

3. On May 22, 1990, Mr. Sobota submitted his application for renewal of his secondary vocational license. (Ex. 1). The application stated that Mr. Sobota had obtained 32 clock hours of course work towards his continuing educational requirement. For the remaining 76 clock hours, the Licensee requested credit for the time spent in construction of his home during 1987.

4. By letter dated May 30, 1990 the Department of Education advised Mr. Sobota that further documentation was needed for part of his clock hour requirement. Attached to the letter were affidavits for the verification of self-employment. The letter also stated that "Work building your own home will not apply, as the rule requires paid work experience, with self employment verified on the basis of income tax documents and backup business records to validate a self-employed business existed." (Ex. 2).

5. The Licensee did not return the self-employment affidavit since it called for verification by Department of Revenue tax records which had not been generated by the Licensee.

6. Subsequently, the Licensee submitted to the Department a letter dated June 25, 1990 from Lumber One, a general contractor in Avon, Minnesota. Lumber

7. By letter dated June 29, 1990, the Department of Education advised Mr. Sobota that the vocational rule required that acceptable occupational experience must be "paid in money" which then must legally be reported to the IRS. The Department stated that it therefore must deny credit for hours spent building Mr. Sobota's home. The letter advised the Licensee of his appeal rights. (Ex. 4).

8. By letter dated July 26, 1990, the Licensee requested an appeal of the decision of the Department of Education to the Board of Teaching. (Ex. 5).

9. The Licensee performed approximately 500 hours of work on his new home during 1987. The work was performed in an approximate 3-months period at the rate of 40 hours per week. The work included finishing the exterior and interior of the house including siding the house, shingling the house, finishing the cabinetry and painting.

10. The Licensee's new house was built by Lumber One, a general contractor. Ron Stanoch was the foreman. Mr. Stanoch did not supervise Mr.

Sobota's work on the house but did offer him advice. The work performed by Mr.

Sobota, along with that of the general contractor, was approved by the building

code inspectors. Lumber One felt that the Licensee's work on his house was well done. The bank which financed the Licensee's new home considered the work

done by Mr. Sobota as a part of the construction cost for purposes of establishing a market value for the house and for determining how much it would

lend to the Licensee.

11. Mr. Sobota was not paid any money for his work on his house and therefore no W-2 form or 1099 form or barter form was ever generated. Mr. Sobota did not declare any income for his work on his tax returns.

12. Mr. Sobota did not check with the Department of Education or anyone else prior to or during his work on his home to see if it could be preapproved

as occupational experience for the purposes of continuing education.

13. Mr. Sobota relied on a Department publication entitled "Vocational Renewal Clock Hours." That publication stated that "occupational experience" means "work experience, paid in money, outside of education or teaching, that demonstrates success in the occupational emphasis areas" It also stated

that "nontaxed backyard experiences or labor tradeoffs would not provide the necessary business/industrial exposure or public accountability. Neither would

building or remodeling one's own home be considered gainful employment."

(Ex.

A).

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Board of Teaching and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 125.09, subd. 1 and 14.50.

2. The Board has complied with all relevant substantive and procedural requirements of statute and rule.

3. The Licensee received proper and timely notice of the hearing in this matter.

4. The Board has the burden of proof to establish that the Licensee's license should not be renewed under Minn. Rule 1400.7300, subp. 5.

5. Minn. Stat. § 125.09, subd. 1(4) provides that the Board of Teaching may suspend or revoke a teacher's license for failure to meet licensure requirements.

6. Minn. Rule 8750.7000, subp. 1 provides that an applicant for relicensure of a regular 5-year vocational license must complete 108 clock hours of relevant preapproved updating activities during the 5-year period immediately before the requested renewal.

7. Under Minn. Rule 8750.7200, subp. 4, one of the categories permitted for the 108 clock hours is upgrading occupational experience.

8. Minn. Rule 8750.4000, subp. 1 defines "occupational experience" as "work experience, paid in money, outside of education or teaching, that demonstrates success in the occupational emphasis areas and related areas sp

9. Under Minn. Rule 8750.4100, occupational experience can be obtained through self-employment but must be paid occupational experience as verified by Department of Revenue tax reports of paid income.

10. The Licensee was not paid in money for the work he performed on his new home.

11. Because the work performed by the Licensee on his new home does not qualify as occupational experience, he has not acquired 108 clock hours of continuing education activities within the licensure period 1985-1990 as required by Minn. Rules 8750.7000 and 8750.7200.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Board of Teaching deny the requested renewal of Frederick G. Sobota's vocational license.

Dated this _12th_ day of July, 1991.

_s/George A. Beck_____
GEORGE A. BECK
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped. Tape Nos. 10,556 & 10,559.
No Transcript Prepared.

MEMORANDUM

The Department of Education denied Mr. Sobota's application for renewal of his secondary vocational teaching license in construction occupations on the grounds that he had not completed sufficient clock hours of continuing education. Specifically, it denied credit for the time the Licensee spent in working on his new house. The Department determined that the Licensee had not been "paid in money" for this work as required by the definition of occupational experience. The Licensee therefore lacked the minimum 108 clock hours which would qualify him for relicensure.

The Licensee argues that there is no dispute concerning the quality, quantity or type of work which he performed on his home. He believes that the dispute only concerns the fact that he was not directly compensated for the work. He argues that the experience he gained was directly relevant to the education of students, that it was quality work performed within a reasonable time period which was approved by the building inspectors. He also points out that his bank felt the work he performed was sufficient to provide a basis for the loan made. He argues that the structure of the compensation should not preclude counting the experience he obtained and points out that this requirement is for relicensure rather than for an original license.

The Board's testimony indicated that the "paid in money" requirement is consistently enforced and is important for two reasons. First, it is a definition which is clear and easily enforced. Secondly, being paid in money in the traditional workplace offers assurance that a job is done in a timely manner under supervision and is done in a quality manner. Generally, the Department's policy is to require a W-2 form issued to an employee or a 1099 form which would be issued to a subcontractor for payment. Neither were filed in this case.

The record indicates that the Licensee has failed to submit evidence of 108 clock hours of continuing education. He was not "paid in money" for the work he did on his own home and therefore does not qualify under the definition of occupational experience. The Board has articulated a rationale for the rule in question and indicated that the rule is consistently enforced. In this case Mr. Sobota was not supervised by anyone in the construction of his house. Mr. Stanoch had no authority to remove him from the job or to correct his work. As the Board points out the value to a student of a teacher's occupational experience is not the same where that experie

The Licensee is responsible for not obtaining any preapproval for his proposed occupational experience in 1987. It was only claimed at the time of license expiration in 1990. Although the Licensee felt that the publication

available to him concerning continuing education was unclear, it does clearly state that the occupational experience had to be paid in money and that building or remodeling one's own home would not be considered self-employment which would qualify for clock hours for continuing education.

G.A.B.